

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:3  
PLR-126872-20

Date:  
May 12, 2021

Legend

Purchaser =

Target =

Target Affiliates =

Date A =

Company Official =

Tax Professionals =

Dear \_\_\_\_\_ :

This letter responds to a letter dated November 20, 2020, submitted on behalf of Purchaser, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting an extension to file a “section 338 election” under section 338(g) of the Internal Revenue Code (the “Code”) with respect to Purchaser’s acquisition of the stock of Target and the deemed acquisitions of the stock of Target Affiliates (sometimes hereinafter referred to as the “Elections”) on Date A. The material information submitted is summarized below.

Prior to Date A, each of Purchaser, Target, and Target Affiliates was a foreign corporation or a foreign entity treated as a corporation for United States federal income tax purposes. Neither Target nor any of Target Affiliates was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on the acquisition date (as defined in section 338(h)(2)).

Purchaser has represented that its acquisition of all the stock of Target on Date A qualified as a “qualified stock purchase,” as defined in section 338(d)(3). For various reasons, however, valid Elections were not filed. After the due date for the Elections, it was discovered that the Elections had not been filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Elections.

Purchaser has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 (taking into account any qualified amended return filed within the meaning of §1.6664-2(c)(3)) at the time Purchaser requested relief and for which the new return position requires or permits a regulatory election for which relief is requested.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a “section 338 election”; and (2) the acquisition is a “qualified stock purchase.”

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. See §301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Purchaser, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Purchaser has shown it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-3, until 75 days from the date on this letter, for Purchaser to file the Elections with respect to the acquisition of the stock of Target and the deemed acquisitions of the stock of Target Affiliates.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Purchaser must file the Elections on Form 8023, in accordance with §1.338-2(d) and the instructions to the Form. A copy of this letter must be attached to Form 8023.

WITHIN 150 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transactions as section 338 transactions for the taxable year in which the transactions were consummated (and for any other affected taxable year). Note, however, that the relief granted by this ruling letter is limited to the above extension of time to file the Elections; no opinion is expressed with respect to any other relief or permission (e.g., permission to change a method of accounting) that any relevant parties would otherwise be required to receive or obtain from the Internal Revenue Service in order to report the transactions consistently with the making of the Elections had the Elections been timely made. A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirements of attaching a copy of this letter by attaching a statement to their return that provides the date on, and control number (PLR-126872-20) of, the letter ruling.

The above extension of time is conditioned on the taxpayers' tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections had been timely made (taking into account the time value of money). We express no opinion as to the taxpayers' tax liability for the years involved.

A determination thereof will be made by the applicable Director's office upon audit of the federal income tax returns involved.

We express no opinion as to: (1) whether the acquisition of the stock of Target and the deemed acquisitions of the stock of Target Affiliates qualifies as a "qualified stock purchase" under section 338(d)(3); or (2) any other tax consequences arising from the Elections.

In addition, we express no opinion as to the tax consequences of filing the Elections late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Elections late that are not specifically set forth in the above ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Purchaser, Company Official, and Tax Professionals. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Thomas I. Russell  
Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: